

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C.

DIRECTOR, OFFICE OF
PROFESSIONAL RESPONSIBILITY,

Complainant,

Complaint No. 2007-38

v.

RICHARD E. MOOSE, ESQ.,

Respondent.

DECISION AND ORDER

The Complainant, by motion filed May 14, 2008, seeks an order holding the Respondent in default pursuant to 31 C.F.R. § 10.68(a). Complaint's motion is based on the ground that the complaint in the above-captioned proceeding was served on the Respondent by certified mail, return receipt requested, on September 12, 2007 (Exhibit 1).¹ However, as of the filing of the instant motion, no answer had been filed by the Respondent. The Respondent, by reply filed May 22, 2008, opposes the motion on the grounds that the delay in answering is due to his documented physical and mental conditions. In addition, the Respondent, on May 27, 2008 belatedly filed an answer to the complaint. As that document was not filed within the time permitted by regulation or by me, it has not been considered for purposes of this motion.

The complaint, at the second paragraph, informed the Respondent of his obligation to file an answer or face the risk of a default. The Respondent requested an adjournment on September 24, and, without any objection by the Complainant, I extended the Respondent's time to answer the complaint until November 12.² I also scheduled a preliminary conference for November 15. (Exhibits 3-5). The conference was rescheduled to November 19 because the Respondent was unavailable.

During the November 19 conference call, the Respondent claimed that his physical and medical conditions prevented him from defending himself. I provided the Respondent until December 4 to submit any medical documentation to substantiate his claim. The Respondent submitted medical documentation on December 10. On December 14, the Complainant responded and asserted that the documentation provided did not substantiate the Respondent's claim that his medical and mental conditions did not prevent him from defending himself in this matter (Exhibits 6-7).

¹ All references to Exhibits refer to exhibits attached to the Complainant's motion, as the Respondent's reply contains no exhibits.

² References to dates, unless otherwise indicated, are for the period of September 2007 to May 2008.

At the pretrial conference on February 25, the Respondent again claimed that his medical and mental conditions prevented him from defending himself. I provided the Respondent with yet more time, until March 12, to submit additional medical documentation to substantiate his claim. The Respondent provided more of the same medical documentation on March 20. On April 30, the Complainant responded, once again, that the medical documentation did not adequately substantiate the Respondent's claim that he was unable to proceed with his defense. The Complainant also expressed the intention to proceed with a motion for a default judgment because the Respondent had yet to file an answer to the complaint. Pursuant to my Order, dated May 6, the Complainant filed the instant motion.

The documentation provided by the Respondent has consisted of brief doctor's notes indicating that he has been receiving medication for a condition referred to as rheumatica. The notes failed to illustrate, as I directed Respondent to demonstrate, a severity of disability confirming an inability to participate in his defense. He was consistently advised in the conferences to retain an attorney, but failed to do so. I am convinced that the Respondent understood the importance of obtaining meaningful documentation from his doctor demonstrating an inability to proceed with his defense.

The complaint alleges disreputable conduct on the part of the Respondent in violation of 31 C.F.R. § 10.51. The Respondent is an attorney who has engaged in practice before the Internal Revenue Service, as defined by 31 C.F.R. § 10.2(d). The allegations in the complaint specifically allege that the Respondent willfully failed to file or timely file, as required by 26 U.S.C. §§ 6011, 6012 and 6072, his Federal individual income tax returns for tax years 2001, 2002, 2003, 2004 and 2005. Such actions, if true, constitute disreputable conduct as set forth in 31 C.F.R. § 10.51, and reflect adversely on his current fitness to practice, warranting his disbarment from practice before the Internal Revenue Service.

By not answering the complaint within the time prescribed or as extended by me on several occasions, the Respondent has admitted the allegations of the complaint and waives a hearing. In accordance with 31 C.F.R. § 10.64(d), I find that the Respondent is in default of the complaint, the allegations in the complaint are admitted, and there is no need for a hearing. Accordingly, I find that the allegations against the Respondent have been proven by clear and convincing evidence in the record, the standard provided in 31 C.F.R. § 10.50 to support the sanction of debarment from practicing law before the IRS.

CONCLUSIONS OF LAW

1. The Respondent, Richard E. Moose, Esq., is an attorney public accountant who has practiced before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility.

2. 31 C.F.R. §10.51 (f) (2002) provides that willfully failing to make a Federal income tax return is grounds for discipline.

3. The Respondent violated the provisions of 31 C.F.R. §10.51 (f) (2002) and §10.51(f) (2005) by engaging in a pattern and practice of willfully failing to file and timely file his Federal individual income tax returns, and pay the corresponding individual and employment taxes for tax years 2001 through 2005. That violation has been proven by clear and convincing evidence in the record.

3. Upon the foregoing findings of fact and conclusions of law, and the entire record, pursuant to 31 C.F.R. §10.76, I issue the following:

ORDER³

The Respondent, Richard E. Moose, Esq., is disbarred from practice before the Internal Revenue Service.

IT IS SO ORDERED.

Dated, Washington, D.C. June 5, 2008

Michael A. Rosas
Administrative Law Judge

³ Pursuant to 31 C.F.R. §10.77, either party may appeal this Decision to the Secretary of the Treasury within thirty (30) days from the date of issuance of this Decision.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER was sent to each of the following on June 9, 2008.

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Secretary, Division of Judges
National Labor Relations Board

CERTIFICATION OF RECORD

I, Michael A. Rosas, Administrative Law Judge, hereby certify that the following attached documents:

1. Complainant's Motion for a Decision by Default, with May 12, 2008 cover letter, declaration of Wendy Yan, Esq., and 11 exhibits annexed to the motion.
2. The Respondent's Reply to Motion for a Decision by Default, filed May 22, 2008, with cover letter.
3. The Respondent's Answer to the Complaint, with cover letter, filed May 27, 2008.

constitute the complete administrative record in the matter of Director, Office of Professional Responsibility v. Richard E. Moose, Esq., Complaint No. 2007-38.

Dated: Washington, D.C. June 5, 2008

Michael A. Rosas
Administrative Law Judge